IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR.

J U D G M E N T

Nanu Bhai @ Nanu Lal Vs. Jitender & Ors.

S.B. Civil Misc. Appeal No.852/2004 under Section 173 of the Motor Vehicles Act against the award passed by Motor Accident Claims Tribunal, Dungarpur.

Date of Judgment:: 13-10-2004

HON'BLE MR. JUSTICE PRAKASH TATIA.

Mr. Manoj Joshi, for the appellant.
Mr. R.K. Singhal,
Mr. Shambhoo Singh, for the respondents.

Heard learned counsel for the parties.

This appeal is against the award dated 21.1.2004 by which the Motor Accident Claims Tribunal in claim case No.75/2001 awarded total compensation of Rs.4,60,000/- to the claimants on account of damages which he suffered due to accident occurred on 2.12.1999. In the accident, the claimant's left leg was amputated from above the knee. The claimant submitted claim petition for Rs.17,58,000/-. The Tribunal awarded Rs.4,60,000/- in total.

According to learned counsel for the appellant, the Tribunal committed serious error of fact when the Tribunal refused to accept the monthly income of the claimant as Rs.15,000/- despite the fact that the claimant was working at Quwait and he produced his bank pass-book which was joint pass-book of claimant and his father. The Tribunal merely reduced the income only on the ground that claimant did not produce any salary certificate. According to learned counsel for the appellant, the Tribunal further committed illegality in reducing the loss of income by 50%. The Tribunal itself calculated the total loss as Rs.8,16,000/- but without assigning any reason reduced the said amount by 50%.

It is further submitted that the Tribunal even after holding that claimant produced bills of expenditure for transportation amounting to Rs.8,235/-, still awarded Rs.5,000 only on this count.

I considered the submissions of learned counsel for the appellant and perused the facts of the case.

There is no dispute that appellant, who was young person of the age of 30 years only, came with a positive case that he was working at Quwait and he was earning Rs.15,000 per month, but at the same time, he did not produce any cogent evidence to prove his income of Rs.15,000/- per month. Assuming for the sake of argument, appellant was earning handsomely, even then the appellant was not enjoying it for himself in view of his admission that he was sending money to his parents. In the

facts and circumstances of particular case, the fact may not be very much relevant because the relevant that is the loss of earning due to accident, but in this case, the petitioner when set up a claim of such a high amount, he should have proved his income which he could have proved by documents but he has not proved, therefore, it appears that petitioner deliberately did not produce any specific document evidencing the actual income of the appellant claimant. From the endorsement made in the pass-book, the actual monthly income cannot be calculated.

In view of the above, the Tribunal had no option but to assess the income looking to the facts of the case and the Tribunal has assessed the income of the appellant as Rs.4,000/- per month, the Tribunal has rightly assessed the income.

The objection of learned counsel for the appellant that total loss of income assessed by the Tribunal was Rs.8,16,000/- is absolutely wrong. This is the only amount of the income and not quantum of the loss which the claimant suffered in this case. The claimant suffered injuries including the amputation of one leg and it is not the case of the claimant that he has been deprived of total income and will not earn anything only because of the accident. The Tribunal assessed the permanent disablement upto the extent of 50% only on account of accident and this assessment is not under challenge. Therefore, the Tribunal while calculating the actual loss caused to the appellant deducted the total income of the appellant by 50% which appears to be the sufficient compensation to the claimants.

I do not find any reason to interfere in the impugned award dated 21.1.2004. The Tribunal found that the appellant produced bills of Rs.8,235/- for expenditure incurred for transportation and awarded Rs.5,000/- to the claimant. The reason is simple. The Tribunal itself after calculating all the bills produced by the appellant relating to his treatment held that appellant incurred expenditure of Rs.24,356/- but still awarded compensation of Rs.30,000/-.

In view of the totality of the facts, the total claim awarded to the claimant appellant of Rs.4,60,000/- cannot be said to be low in any manner, so as to call for any interference by this Court in appellate jurisdiction.

The appeal of the appeal is, therefore, dismissed.

[PRAKASH TATIA],J.

Praveen